

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

VOL. 32

FEBRUARY 25, 1998

NO. 8

This issue contains:
U.S. Customs Service
General Notices

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 1-1998)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of January 1998 follow. The last notice was published in the CUSTOMS BULLETIN on February 4, 1998.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, NW, Washington, DC. 20229.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: February 10, 1998.

JOHN F. ATWOOD,

Chief,

Intellectual Property Rights Branch.

The list of recordations follow:

02/02/98
07:58:27U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN JANUARY 98

REC NUMBER	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	PES
C099800002	1980105	BEARLY: EXPRESSIONS BAN BEAR BEARS	MASTER TOYS & NOVELTIES INC.	N
C099800003	1980109	REINDEER CARSTH SOYA BEAN OIL	HANOVER ACCESSORIES	N
C099800004	1980113	SHRIMP PASTIE WITH SOYA BEAN OIL	P.S.H., INC.	N
C099800005	1980113	PRESERVED MUD FISH	P.S.H., INC.	N
C099800006	1980113	PRESERVED GOURAMY FISH	P.S.H., INC.	N
C099800007	1980113	KIRBY'S STAR STACKER (DMG VERSION)	WINTENDO OF AMERICA INC.	N
C099800008	1980114	ANASTASIA (STYLE GUIDE)	THENTIETH CENTURY FOX FILM CORP	N
C099800009	1980114	CHOCOLATE COOKIES	UNITED BAKERS	N
C099800010	1980118	CRATE DESIGN PENDANT, RING, EARRING & BRACELET	UNITED BAKERS	N
C099800011	1980118	CRATE DESIGN CARD	CRAIG HANEL C/O SKY KIDS, INC.	N
C099800012	1980128	CRATE DESIGN	CRAIG HANEL C/O SKY KIDS, INC.	N
SUBTOTAL RECORDATION TYPE 11				
TK98000001	20031026	PACEMARK	OKI AMERICA INC.	N
TK98000002	2004015	OKI ELECTRIC	OKI ELECTRIC INDUSTRY CO., LTD.	N
TK98000003	2004015	OKI ELECTRIC	OKI ELECTRIC INDUSTRY CO., LTD.	N
TK98000004	20071007	OKI VIEH	OKI ELECTRIC INDUSTRY CO., LTD.	N
TK98000005	20071007	MASTERCARD AND DESIGN	MASTERCARD INTERNATIONAL INC.	N
TK98000006	20050425	STEALTH	S INDUSTRIES, INC.	N
TK98000007	20020915	STEALTH	S INDUSTRIES, INC.	N
TK98000008	20051224	STEALTH	S INDUSTRIES, INC.	N
TK98000009	20051224	STEALTH	S INDUSTRIES, INC.	N
TK98000010	20061015	STEALTH SQUAD STYLIZED	S INDUSTRIES, INC.	N
TK98000011	20061015	STEALTH	S INDUSTRIES, INC.	N
TK98000012	20050423	STEALTH	STOLLER, LEO D. D/B/A SENTRA SPO	N
TK98000013	20041213	HOCOMA AND DESIGN	S INDUSTRIES, INC.	N
TK98000014	20040110	INTERACTIVE ENTERTAINMENT SYSTEMS	BOOT ROYALTY COMPANY, L.P.	N
TK98000015	20050216	INTERACTIVE ENTERTAINMENT SYSTEMS	BORER & RACHEL CENTER	N
TK98000016	20050216	INTERACTIVE ENTERTAINMENT SYSTEMS	YAMER ELECTRIC	N
TK98000017	20000508	BAKER	BAKER, KHAFF & TUBBS INC.	N
TK98000018	20041110	BAKER	BAKER, KHAFF & TUBBS INC.	N
TK98000019	20050211	HOT BODIES	CARPER BROTHERS MANUFACTURING CO	N
TK98000020	20050924	KALLISTA	KALLISTA, INC.	N
TK98000021	20050117	FRACON	FRACON CORPORATION	N
TK98000022	20030729	CHAPS BY RALPH LAUREN	PRU USA HOLDINGS, INC.	N
TK98000023	20031001	RALPH LAUREN & SYMBOL	PRU USA HOLDINGS, INC.	N
TK98000024	20080524	RALPH LAUREN & SYMBOL	PRU USA HOLDINGS, INC.	N
TK98000025	20070728	RALPH LAUREN & SYMBOL	PRU USA HOLDINGS, INC.	N
TK98000026	20070620	RALPH LAUREN & SYMBOL	PRU USA HOLDINGS, INC.	N
TK98000027	20040315	CHAPS BY RALPH LAUREN	PRU USA HOLDINGS, INC.	N
TK98000028	1980109	POLO BY RALPH LAUREN	PRU USA HOLDINGS, INC.	N
TK98000029	20070614	RALPH LAUREN & SYMBOL	PRU USA HOLDINGS, INC.	N
TK98000030	20070714	RALPH LAUREN & SYMBOL	PRU USA HOLDINGS, INC.	N
TK98000031	20070728	RALPH LAUREN & SYMBOL	PRU USA HOLDINGS, INC.	N
TK98000032	20070728	RALPH LAUREN & SYMBOL	PRU USA HOLDINGS, INC.	N
TK98000033	20070728	RALPH LAUREN & SYMBOL	PRU USA HOLDINGS, INC.	N
TK98000034	20070721	POLO PLAYER SYMBOL	PRU USA HOLDINGS, INC.	N
TK98000035	20070201	POLO BY RALPH LAUREN	PRU USA HOLDINGS, INC.	N

02/02/98
07:38:27

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN JANUARY 98

PAGE
DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RTS
TKH9800036	19980109	20061207	RALPH (POLO PLAYER SYMBOL)	PRL USA HOLDINGS, INC.	N
TKH9800037	19980109	20061207	CHAPS RALPH LAUREN	PRL USA HOLDINGS, INC.	N
TKH9800038	19980109	20061127	RALPH LAUREN	PRL USA HOLDINGS, INC.	N
TKH9800039	19980109	20090502	POLO FOUR QUADRANT CREST	PRL USA HOLDINGS, INC.	N
TKH9800040	19980109	20060125	POLO SPORT	PRL USA HOLDINGS, INC.	N
TKH9800041	19980109	20070401	POLAR JEANS CO.	PRL USA HOLDINGS, INC.	N
TKH9800042	19980109	20060125	POLO JEANS CO.	PRL USA HOLDINGS, INC.	N
TKH9800043	19980109	20090326	POLO USA	PRL USA HOLDINGS, INC.	N
TKH9800044	19980109	20020107	RALPH LAUREN	PRL USA HOLDINGS, INC.	N
TKH9800045	19980112	20071007	KINGPACK STYLIZED	DYNAMIC INDUSTRIES, CORP.	N
TKH9800046	19980113	20061205	ANGKOR BEER	PRESIDING BISHOP OF THE ORTHODOX	N
TKH9800047	19980113	20070729	ANGKOR BEER EXTRA STOUT	PRESIDING BISHOP OF THE ORTHODOX	N
TKH9800048	19980113	20060125	DOUBLE HORSES BRAND AND DESIGN	J&A IMPORTERS, INC.	N
TKH9800049	19980113	20060125	DOUBLE HORSES BRAND AND DESIGN	J&A IMPORTERS, INC.	N
TKH9800050	19980114	20090103	K-C LOGO (MISCELLANEOUS DESIGN)	KRONOS ACQUISITION, INC.	N
TKH9800051	19980116	20061207	KEEBLER STYLIZED	KEEBLER COMPANY	N
TKH9800052	19980116	20060415	SUPERNUTRITION	SUPERNUTRITION LIFE-EXTENSION	N
TKH9800053	19980120	20030110	GEORGIO ARMANI	G.A. MODELLING S.A. INC.	N
TKH9800054	19980120	20030110	GEORGIO ARMANI	G.A. MODELLING S.A. INC.	N
TKH9800055	19980121	20010608	TONY LAMA STYLIZED	BOOT ROYALTY COMPANY, L.P.	N
TKH9800056	19980121	19980328	TONY LAMA STYLIZED	BOOT ROYALTY COMPANY, L.P.	N
TKH9800057	19980122	20060720	U STYLIZED (SERVICE MARK)	UNITED AIR LINES, INC.	N
TKH9800058	19980123	20060720	U STYLIZED (SERVICE MARK)	UNITED AIR LINES, INC.	N
TKH9800059	19980127	20040719	COMPANY 907	AT LAST SPORTSWEAR, INC.	N
TKH9800060	19980127	20041227	SOLUTIONS	AT LAST SPORTSWEAR, INC.	N
TKH9800061	19980127	20030804	FINESCT	AT LAST SPORTSWEAR, INC.	N
TKH9800062	19980127	20030804	FINESCT	AT LAST SPORTSWEAR, INC.	N
TKH9800063	19980128	20060415	SUPERNUTRITION	ADVANCE MAGAZINE PUBLISHERS	N
TKH9800064	19980128	20071029	BOH APPETIT	ADVANCE MAGAZINE PUBLISHERS	N
TKH9800065	19980129	20031228	98A	HEULETT-PACKARD COMPANY	N
TKH9800066	19980129	20031228	75A	HEULETT-PACKARD COMPANY	N
TKH9800067	19980129	20031228	85A	HEULETT-PACKARD COMPANY	N
TKH9800068	19980129	20031228	95A	HEULETT-PACKARD COMPANY	N
TKH9800069	19980129	20031228	95A	HEULETT-PACKARD COMPANY	N
TKH9800070	19980129	20020903	DCC AND DESIGNHOT BODIES	HEULETT-PACKARD COMPANY	N
TKH9800071	19980129	20040906	DIAMOND J & DESIGN	RED DIAMOND INC.	N

SUBTOTAL RECORDATION TYPE 70
 TMM9800001 19980114 99999999 IBB1
 SUBTOTAL RECORDATION TYPE 1
 TOTAL RECORDATIONS ADDED THIS MONTH 82

U.S. CUSTOMS SERVICE

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 3, 1998.
MAR-05 RR:TC:SM 560677 BLS
Category: Marking

RICHARD F. BUSCH, II
HALL & EVANS, L.L.C.
1200 Seventeenth Street
Denver, CO 80202-5817

Re: U.S. Government Procurement; Final Determination; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, Customs Regulations (19 CFR 177.21 et seq.); Country of origin of notebook computer products; substantial transformation; HRL 735608; HRL 559336.

DEAR MR. BUSCH:

This is in reference to your letters dated September 23 and September 29, 1997, on behalf of Dell Computer Corporation (Dell), requesting a final determination of origin under Subpart B of Part 177, Customs Regulations (19 CFR 177.21 et seq.) in connection with the offering of two portable notebook computer products for sale to the U.S. Government. (Scenarios 1 and 2 of your submission).

In your letter of December 3, 1997, you also advised that Dell was withdrawing its ruling request at this time in connection with Scenario 3, pertaining to certain operations in the U.S., but would re-submit the request with additional information at a later date. Under the circumstances, we will address only the issues pertaining to the notebook computers.

Under Subpart B of Part 177, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.), the Customs Service issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain "Buy America" restrictions in U.S. law or practice for products offered for sale to the U.S. Government. Hall & Evans, L.L.C., as counsel to Dell, a party-at-interest within the meaning of 19 CFR 177.22(d)(1), is entitled to request this final determination.

Facts:

The two notebook computer products, "Twister" and "Mojave," are designed and engineered to meet a broad range of custom configurations. Mojave is primarily designed to meet the needs of government agencies/large corporations, and Twister is primarily designed to meet the needs of sophisticated individuals and small businesses.

In general, both the Mojave and Twister notebook computers will be manufactured by Dell from parts and components sourced through multiple vendors in a variety of countries. Dell's Texas manufacturing operation consists of three phases. The first phase is the Government customer's design/order, which is the actual beginning of a customized notebook computer system. The second phase of the manufacturing operation involves the assembly of parts, subassemblies and components during a multi-station production process. Finally, Dell has developed a proprietary systems integration process (FISH/FIDA) that transforms the non-operational "chassis" for Twister and Mojave into customized computer notebook systems that will operate to the precise requirements of different Government customers.

You state that Dell employs software programmers and hardware engineers, who must not only write the appropriate software to configure each system on a build-to-order basis, but also ensure all existing software and components are fully compatible and optimized with the thousands of software and hardware component configurations which the Government may dictate. You also state that all Dell employees who work on the Mojave and Twister production lines must attend internal training to become certified to perform the delicate tasks required in a number of the manufacturing stations.

Assembly of Twister

When the chassis is received from the Taiwanese OEM (original equipment manufacturer), the LCD and the CPU are already installed on the base plastics, but the BIOS and

memory modules are not so installed. The components are sourced from various countries, which include: the chassis (Taiwan); hard disk drive (Thailand); BIOS chip (U.S.); floppy disk drive (China); AC adapter (China, but in the future, Thailand); CD ROM (Japan); fax modem cards (U.S.); docking station (Taiwan); and the memory board (Korea, Japan, or Singapore). The process of assembling the product is as follows:

- Station 1.* Dell receives chassis; it is checked for defects and placed on the assembly line. The chassis is matched with a specific order.
- Station 2.* System service tag numbers are input; customer-specific testing regime is configured and loaded; customer-specific disk configured.
- Station 3.* BIOS chip and memory modules installed.
- Station 4.* Hard Disk Drive prepared for installation.
- Station 5.* Hard Disk Drive installed into notebook chassis.
- Station 6.* PCMCIA modem card installed.
- Station 7.* AC adapter plugged in, PCMCIA insert removed and network interface card inserted. Notebook booted and Flash BIOS burned into non-volatile RAM. FISH/FIDA configures a customer-specific machine and begins running diagnostic tests.
- Station 8.* Electro-Mechanical Repair. Any notebooks with technical problems are sent to this station for repair.
- Station 9.* Quality Control.
- Station 10-12.* Dell customized and proprietary "Pic to Light" assembly process. (A manufacturing system that identifies specific peripherals, components and subassemblies for inclusion into the manufacturing process along the assembly line.)
- Station 13.* "Out of Box" Audit. Notebooks are taken randomly from the assembly line and tested.
- Station 14.* Automatic processing and shipping.

Assembly of Mojave

The assembly of Mojave is similar but not identical to that of Twister. When Dell receives the notebook chassis from Taiwan, the LCD screen, floppy disc drive and the BIOS chip have been assembled onto the base plastics, but neither the keyboard nor the CPU and other primary chips are installed. The additional components which make up the Mojave are identical to the components assembled to make the Twister with the exception of the keyboard, which is not included as part of the Twister configuration. The components are sourced from various countries, which include: the chassis (Taiwan); hard disk drive (Thailand); floppy disk drive (China); AC adapter (China, but in the future, Thailand); CD ROM (Japan); fax modem cards (U.S.); docking station (Taiwan); and the memory board (Korea, Japan, or Singapore). The country of origin of the keyboard is Japan, but in the future will be Malaysia. The CPU is of U.S.-origin. The process of assembling Mojave is as follows:

- Station 1.* Dell receives chassis; it is checked for defects and placed on the assembly line. The chassis is matched with a specific order.
- Station 2.* System service tag numbers are input; customer-specific testing regime is configured and loaded; customer-specific disk configured.
- Station 3.* CPU processor module and hybrid cooler installed.
- Station 4.* Keyboard installed.
- Station 5.* Memory modules installed.
- Station 6.* Hard Disk Drive prepared for installation.
- Station 7.* Hard Disk Drive installed into notebook chassis.
- Station 8.* PCMCIA modem card installed.
- Station 9.* Notebook booted and Flash BIOS burned into non-volatile RAM. FISH/FIDA configures a customer-specific machine and begins running diagnostic tests.
- Station 10.* Electro-Mechanical Repair. Any notebooks with technical problems are sent to this station for repair.

The operations performed at Stations 11 through 16 of the Mojave assembly line are identical to the operations that occur at Stations 9 through 14 of the Twister assembly line, including quality control, "Pic to Light" process, testing, and shipping.

Issue:

Whether the assembly in the U.S. of the various components into the Twister and Mojave notebook computers constitute a substantial transformation, such that the computers may be considered products of the U.S.

Law and Analysis:

As prescribed under Title III of the Trade Agreements Act, the origin of an article not wholly the growth, product, or manufacture of a single country or instrumentality is to be determined by the rule of substantial transformation. 19 U.S.C. 2518(4). Such an article is not a product of a country unless it has been substantially transformed there into a new and different article of commerce with a name, character or use different from that of the article or articles from which it was transformed. See also 19 CFR 177.23(a). Thus, the critical issue that must be addressed in determining the country of origin of "Mojave" and "Twister" is whether the imported foreign components are substantially transformed as a result of the operations performed in the U.S. That is, does the name, character or use of the foreign components change as a result of the processing and assembly operations performed to manufacture the notebook computers. In *Belcrest Linens v. United States*, 573 F. Supp. 1149 (CIT 1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984), the issue framed by the court was whether as a result of the assembly process the parts lose their identity and become an integral part of the new article. Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 85-25. However, the issue of whether a substantial transformation occurs is determined on a case-by-case basis.

Dell contends that the chassis and other components of both Mojave and Twister undergo manufacturing processes resulting in customized notebook computers distinct from the components from which they were assembled. In this regard, Dell emphasizes that as distinguished from other companies' manual load, fixed image processes, Mojave and Twister are customer specific at the time of the order, and involve the loading of operational characteristics and the specific software capability requested by the customer. Dell points to the degree of expertise required to implement its proprietary FISH/FIDA manufacturing process, represented by its skilled programmers and engineers. Dell states that the interactions between various software packages and between hardware devices are resolved by Dell's FISH/FIDA process, which is not the case during a manual installation process (involving operational software from diskettes or CD ROMs). Accordingly, Dell argues that the assembly operations coupled with the unique customer-specific manufacturing process transform the foreign components into products, notebook computer systems, with a character and use distinct from the parts from which they were made.

Customs has previously considered the issue of whether the processing and assembly of electronic components into a finished article results in a substantial transformation of the individual components.

In Headquarters Ruling Letter (HRL) 711967 (March 17, 1980), Customs held that television sets which were assembled in Mexico with printed circuit boards, power transformers, yokes and tuners from Korea and picture tubes, cabinets, and additional wiring from the U.S. were products of Mexico for country of origin marking purposes. The U.S. and Korean parts were substantially transformed by the processing performed in Mexico and all the components lost their individual identities to become integral parts of the new article.

In HRL 732170 (January 5, 1990), Customs held that a backless television cabinet containing a tuner, speaker and circuit board imported in the U.S., was substantially transformed there when assembled with a domestic color picture tube, deflection yoke, electron beam bender and degaussed coil, and a remote control into a finished television receiver. Customs stated that the imported components lost their individual identities as a result of the assembly operation in that they became integral parts of a new article—a television.

HRL 735608 (April 27, 1995) involved various scenarios pertaining to the assembly of a desktop computer in the U.S. and the Netherlands. In one of the scenarios, foreign components to be assembled in the U.S. included the case assembly (including the computer case, system power supply and floppy disc drive), partially completed motherboard, CPU (which controls the interpretation and execution of instructions and includes the arithmetic-logic unit and control unit), hard disc drive, slot board, keyboard BIOS and system BIOS (basic input and output system). Additional components manufactured in the U.S. or the Netherlands to be assembled into the finished desktop computers depending on the model included an additional floppy drive, CD ROM disk, and memory boards. In that case, Customs found that the foreign case assemblies, partially completed motherboards, hard disk drives

and slot boards underwent a change in name, character and use as a result of the operations in the U.S. and lost their separate identities in becoming an integral part of a desktop computer. Customs noted that the finished article, a desktop computer, was visibly different from any of the individual foreign components, acquiring a new use, processing and displaying information. Accordingly, Customs held that the individual components underwent a substantial transformation as a result of the operations performed in the U.S.¹

Based on the totality of the circumstances of this case and consistent with the rulings cited above, we find that the foreign components that are used in the manufacture of the notebook computers Twister and Mojave in the manner described are substantially transformed as a result of the operations performed in the U.S. The name, character, and use of the foreign chassis in each case, hard disk drive, floppy disc drive, memory boards and other foreign components change as a result of the processing and other assembly operations performed in the U.S. Like the case assemblies in HRL 735608 and HRL 559336, the chassis', hard disk drives, floppy disc drives, memory boards and other components lose their separate identities and become an integral part of a notebook computer as a result of the assembly operations and other processing. The character and use of the foreign components are changed as a result of the operations performed, in that a new article, a notebook computer, is visibly different from any of the individual foreign components, acquiring a new use, processing and displaying information.

Holding:

Based on the facts presented, foreign chassis', hard disk drives, floppy disks, memory boards and other foreign components, which are further processed and assembled into notebook computers in the U.S., in the manner described above, are substantially transformed as a result of the operations performed in the U.S. Accordingly, the country of origin of the notebook computers is the U.S.

Notice of this final determination will be given in the Federal Register as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that Customs reexamine the matter anew and issue a new final determination.

Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Dated: February 4, 1998.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

¹ See also HRL 559336 dated March 13, 1996, where Customs found that foreign components (i.e., clamshell base, LCD video display, hard disk drive, floppy disk drive, A/C power adapter) used in the assembly of notebook computers under four scenarios were substantially transformed as a result of the assembly operations performed in the United States. In that case, depending on the scenario, the clamshell was either complete when received or consisted of a separate top (video display component) and base, which may or may not have included the keyboard. It is also noted that in the various scenarios presented, the CPU/daughterboard assembly, an essential component of the notebook computer, was produced in the U.S.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, February 11, 1998.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

REVOCATION OF CUSTOMS RULING RELATING TO COUNTRY
OF ORIGIN MARKING REQUIREMENTS OF CLOCK CASES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter concerning marking of clock cases.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs is revoking a prior ruling pertaining to the country of origin marking of clock cases. Notice of the proposed revocation was published in the CUSTOMS BULLETIN, Volume 31, No. 52. No comments were received in response to that publication.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Burton Schlissel, Special Classification and Marking Branch, (202) 927-1034.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 24, 1997, Customs published in the CUSTOMS BULLETIN, Volume 31, No. 52, a notice of proposal to revoke a prior Customs ruling pertaining to the marking of clock movements and cases. Customs had previously ruled in that case that marking clock movements and cases with indelible ink or paint satisfies the special marking requirements of Additional U.S. Note 4, Chapter 91, Harmonized Tariff Schedule of the United States (HTSUS).

Section 134.43(b), Customs Regulations (19 CFR 134.43(b)), in conjunction with section 11.9 (19 CFR 11.9), provides that clocks must be marked in accordance with the special requirements of Chapter 91, Additional U.S. Note 4, HTSUS (19 U.S.C. 1202). This Note requires that any clock movement or case provided for in the subpart, whether imported separately or attached to any article provided for in the subpart, shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving, stamping or mold-marking (either indented or raised), as specified in the provisions of the Note. Since these special marking requirements for clocks are Congressionally enacted, the Customs Service has no authority to grant exceptions.

In NY Ruling Letter A84167 dated June 5, 1996, Customs stated that marking stainless steel backs of certain clock cases with permanent indelible ink to show the country of manufacture would be allowable. In proposing to revoke this ruling, Customs stated that the ruling was in error as marking with indelible ink is not among the methods of marking specified in Additional U.S. Note 4. Customs also stated that the ruling was inconsistent with prior and subsequent Customs rulings which hold that clock cases must be marked by one of the methods specified in Note 4, and any other methods of marking are unacceptable.

No comments were received in response to this notice of intent to revoke NY Ruling Letter A84167. (It is noted, however, that Customs has also been made aware of another prior ruling, HRL 560457 dated August 4, 1997, in which we held that country of origin marking on a watch case with permanent indelible ink satisfied the special marking requirements of Additional U.S. Note 4. As this ruling is not consistent with Note 4, it will be the subject of a future notice to be published in the CUSTOMS BULLETIN.)

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NY Ruling Letter A84167 to reflect that marking with indelible ink is not among the methods of marking specified in the special requirements of Chapter 91, Additional U.S. Note 4, HTSUS. HRL 560636, which revokes NY Ruling Letter A84167, is set forth as an Attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change in practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: February 10, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
 U.S. CUSTOMS SERVICE
 Washington, DC, January 26, 1998.
 MAR-05 RR:TC:SM 560636 BLS
 Category: Marking

MS. FLORENCE PIANKO
 ADVANCE WATCH CO., LTD.
 25800 Sherwood
 Warren, MI 48091

Re: Country of origin marking of watch movements; Additional U.S. Note 4(b), Chapter 91; NY Ruling A84167.

DEAR MS. PIANKO:

This is in reference to your letter dated July 31, 1997, on behalf of Advance Watch Co., Ltd., requesting a ruling regarding the country of origin marking of certain clock movements. A sample movement is submitted with your request.

Facts:

The movement is marked in a rectangular box on the outside housing, in molded, raised, lettering with the words: "QUARTZ", "NO JEWELS", "UNADJUSTED", "GAL-28."

It is also marked "ADVANCE" and "CHINA" in black ink (or paint) on the outside plastic surface of the movement housing.

Issue:

Whether the movement is properly marked in compliance with Additional U.S. Note 4, Chapter 91, Harmonized Tariff Schedule of the United States (HTSUS).

Law and Analysis:

Additional U.S. Note 4, Chapter 91, HTSUS, ("Note 4") requires that any clock movement or case provided for in the subpart, whether imported separately or attached to any article provided for in the subpart, shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving, or stamping or mold-marking (either indented or raised), as specified in the provisions of the Note. Section (b) of Note 4 requires that clock movements shall be marked on the most visible part of the front or back plate to show the name of the country of manufacture; the name of the manufacturer or purchaser; and, in words, the number of jewels, if any, serving a mechanical purpose as frictional bearings. Since these special marking requirements for clocks are Congressionally enacted, and are mandatory, the Customs Service has no authority to grant exceptions. Section 134.43(b), Customs Regulations (19 CFR 134.43(b)), in conjunction with section 11.9 (19 CFR 11.9), provides that clocks must be marked in accordance with the special requirements of Note 4.

In Headquarters Ruling Letter (HRL) 559066 dated May 12, 1995, we held that printing on a clock case in ink did not satisfy the special marking requirements for clock cases because the marking was accomplished by a method other than those specified in Note 4. Under the special marking requirements, the methods of marking clock movements and clock cases are identical. See also HRL 734860 dated March 3, 1993 (marking on a gold foil sticker on the bottom of a clock case was not a method prescribed by the special marking requirements and the marking was not in a proper location) and HRL 559934 dated October 23, 1996 (marking with an adhesive sticker was not in accordance with the requirements of Note 4). However, in NY Ruling A84167 dated June 5, 1995, Customs ruled that marking stainless steel backs of certain clock cases with permanent indelible ink would be allowable. This ruling is inconsistent with Note 4, above, which permits the marking of clock cases and clock movements only by the prescribed statutory methods, and with the previously cited Customs rulings.

Accordingly, as applied to the subject movement, we find that the marking does not satisfy the special marking requirements for clock movements because it is not done by one of the methods specified in Note 4. Printing in ink (or painting) the country of origin on the clock movement is not considered an indelible mark, because unlike cutting, die-sinking, engraving, or stamping, it does not leave a permanent impression in the metal of the clock case and may be smeared or wear off over time. As previously stated, Customs has no authority to grant an exception to the statutory marking requirements under Note 4.

In HRL 559998 dated January 30, 1997, we stated that the language of Note 4 clearly requires that the watch movement be marked with the number of jewels contained therein, which translates to one or more. Consequently, we held that Note 4 does not require any additional marking indicating the number of jewels where a movement has no jewels. Therefore, as the subject movement has no jewels, the marking "NO (0) JEWELS" is not required.

Holding:

Marking a clock movement with the country of origin and name of the manufacturer by ink or paint does not comply with the special marking requirements for clock movements of U.S. Additional Note 4, Chapter 91, HTSUS. Under the special marking requirements, clock movements and cases are to be indelibly marked only by cutting, die-sinking, engraving, or stamping or mold-marking. NY Ruling A84167 is revoked in accordance with this decision.

Additional U.S. Note 4 requires that a watch movement be marked with the number of jewels contained therein, and does not require any additional marking, such as "NO (0) JEWELS" to reflect that the movement has no jewels.

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

SANDRA L. BELL,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION/REVOCATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF RESISTANCE HEATED FURNACES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification/revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings and modify two other rulings relating to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of resistance heated diffusion furnaces. These are industrial furnaces in which heat is produced by passing a current through metal resistance wires. Customs invites comments on the correctness of this proposal.

DATE: Comments must be received on or before April 27, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, DC 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings and modify two other rulings, all relating to the tariff classification of resistance heated diffusion furnaces. Customs invites comments on the correctness of this proposal.

NY 818472, dated February 20, 1996, in part classified a vertical diffusion furnace for the oxidation of semiconductor wafers in subheading 8514.30.20, HTSUS, as other furnaces for diffusion, oxidation or annealing of semiconductor wafers. NY A81746, dated April 17, 1996, was issued to clarify NY 818472 by noting that only furnace units themselves, and not entire semiconductor processing systems, were to be imported. NY A81746 confirmed the subheading 8514.30.20, HTSUS, classification. NY 818472 and NY A81746 are set forth, respectively, as "Attachment A" and "Attachment B" to this document. NY 855845, dated September 14, 1990, in part classified a furnace designed to oxidize and/or diffuse silicon wafers in subheading 8514.30.20. NY 855845 is set forth as "Attachment C" to this document. NY 862517, dated May 8, 1991, in part classified a successor model to the one the subject of NY 855845 in subheading 8514.30.20, HTSUS. NY 862517 is set forth as "Attachment D" to this document. Finally, NY A89407, dated November 25, 1996, in part classified vertical furnaces for diffusion, oxidation or annealing, imported without the vacuum pump system, in subheading 8514.30.20, HTSUS. NY A89407 is set forth as "Attachment E" to this document.

The subheading 8514.30.20, HTSUS, classification in each of the cited rulings was based on the absence of information that the furnaces were resistance heated. It is now Customs position that the furnace units previously classified in subheading 8514.30.20, HTSUS, are classifiable as other industrial or laboratory resistance heated furnaces and ovens because of evidence that now indicates the heating element in each furnace is a metal, electrically charged resistance wire that is wrapped around the outside of the furnace tube to provide even heat throughout the zone. The furnaces are classifiable in subheadings 8514.10.40 or 8514.10.80, HTSUS, as appropriate.

HQ 961005, revoking NY 818472 and NY A81746, is set forth as "Attachment F" to this document. HQ 961329 modifying NY 855845 is set forth as "Attachment G" to this document. HQ 961330 modifying NY 862517 is set forth as "Attachment H" to this document. HQ 961332 modifying NY A89407 is set forth as "Attachment I" to this document.

Before taking this action, we will give consideration to any written comments timely received.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: February 10, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, February 20, 1996.
CLA-2-85: RR:NC:MA 104 818472
Category: Classification
Tariff No. 8514.30.2000 and 8479.89.8576

MR. DARRELL SEKIN JR.
DJS INTERNATIONAL SERVICES, INC.
P.O. Box 612785
DFW Airport, TX 75261

Re: The tariff classification of semiconductor manufacturing machines from Japan.

DEAR MR. SEKIN:

In your letter dated January 19, 1996 on behalf of Tokyo Electron Oregon you requested a tariff classification ruling.

You have submitted a brochure for the ALPHA-8 Vertical Furnace/LP-CVD System. There are two versions which cannot be used interchangeably. The ALPHA-8D is a furnace for the oxidation of semiconductor wafers at atmospheric pressure with a normal operating temperature range of 850 to 1200 degrees C. The ALPHA-8C is an LPCVD unit (low pressure chemical vapor deposition) with a vacuum system and a temperature range of 500 to 850 degrees C.

The applicable subheading for the ALPHA-8D Vertical Furnace will be 8514.30.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for industrial or laboratory electric furnaces and ovens; other furnaces and ovens: for diffusion, oxidation or annealing of semiconductor wafers. The applicable subheading for the ALPHA-8C LP-CVD will be 8479.89.8576, HTS, which provides for machines for processing of semiconductor materials; machines for production and assembly of diodes, transistors and similar semiconductor devices and electronic integrated circuits: chemical vapor deposition (CVD) apparatus including low pressure and plasma enhanced systems. The rate of duty for both of these subheadings will be free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert Losche at 212-466-5670.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, April 17, 1996.
CLA-2-85:RR:NC:MA:104 A81746
Category: Classification
Tariff No. 8514.30.2000

MR. DARRELL SEKIN JR.
DJS INTERNATIONAL SERVICES, INC.
P.O. Box 612785
DFW Airport, TX 75261

Re: The tariff classification of diffusion furnaces from Japan.

DEAR MR. SEKIN JR.:

In your letter dated March 11, 1996 on behalf of Tokyo Electron Oregon you requested a tariff classification ruling.

The ALPHA-8 furnaces are vertical diffusion furnaces. The ALPHA-8C furnace unit which has a normal operating temperature of 500 to 850 degrees C is used in the production of semiconductor wafers by the LPCVD (low pressure chemical vapor deposition) method. The ALPHA-8D furnace unit which has a normal operating temperature range of 850 to 1200 degrees C is used in the production of semiconductor wafers by the oxidation method. In your letter, you stress that the merchandise to be imported will be the furnace units only, not the entire semiconductor processing systems. The applicable subheading for the ALPHA-8C and ALPHA-8D furnace units will be 8514.30.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for industrial or laboratory electric furnaces and ovens; * * *: other furnaces and ovens: for diffusion, oxidation or annealing of semiconductor wafers. The rate of duty will be free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert Losche at 212-466-5670.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, September 14, 1990.
CLA-2-84:S:N:N1:103 855845
Category: Classification
Tariff No. 8514.30.0040 and 8479.89.9076

MR. SHUMEI NAGAYA
KOKUSAI ELECTRIC CO., LTD. AMERICA
3000 Marcus Avenue, Suite 3E11
Lake Success, NY 11042

Re: The tariff classification of semiconductor manufacturing machines from Japan.

DEAR MR. NAGAYA:

In your letter dated August 20, 1990 you requested a tariff classification ruling.

With your inquiry you submitted a brochure describing the Vertron Model DD802V oxidation/diffusion system and the Vertron Model DJ802V low pressure chemical, vapor deposition (LPCVD) system. The Model DD802V is a furnace designed to oxidize and/or

diffuse silicon wafers. The wafers are initially placed in a reactor tube within the unit by means of an automatic wafer cassette transfer mechanism, and the tube is heated to a temperature of approximately 1000 degrees Centigrade. To accomplish oxidation, the tube is filled with oxygen at atmospheric pressure. This results in thermal oxidation of the wafer and the formation of a layer of silicon dioxide on the wafer surface. To accomplish diffusion which requires that chemical impurities known as dopants be placed into specific regions of the wafer, the wafer is exposed to a gaseous concentration of the dopant within the tube, causing the dopant to diffuse into the wafer. Diffusion masks are used to prevent the dopant from entering adjacent regions of the wafer.

The Model DJ802V LPCVD system is used to deposit thin films onto the surface of the silicon wafer. The reaction tube is heated to a temperature of approximately 800 degrees centigrade and air is evacuated from the tube by means of vacuum pumps. The wafer is then exposed to the appropriate gases which have been combined in the partially evacuated reaction tube. The resulting reaction causes the gases to be uniformly deposited onto the surface of the wafer, thus producing a thin film.

You have stated in your letter that the Model DD802V is specifically designed for oxidation/diffusion, and the Model DJ802V is specifically designed for low pressure chemical vapor deposition. You have further stated that they cannot be used interchangeably, and that the LPCVD system cannot be converted into an oxidation/diffusion system and vice versa. While the Model DD802V is similar to the Model DJ802V, the latter contains vacuum pumps and the chamber and associated equipment are constructed to vacuum specifications. In addition, the operating temperatures, heater construction and power requirements for the two models are different.

The applicable subheading for the Model DD802V oxidation/diffusion system will be 8514.30.0040, Harmonized Tariff Schedules of the United States (HTS), which provides for other industrial or laboratory electric furnaces for diffusion, oxidation or annealing of semiconductor wafers. The rate of duty will be 2.5 percent *ad valorem*.

The applicable subheading for the Model DJ802V low pressure chemical vapor deposition system will be 8479.89.9076, HTS, which provides for other machines and mechanical appliances having individual functions, not specified or included elsewhere; chemical vapor deposition apparatus including low pressure and plasma enhanced systems. The rate of duty will be 3.7 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,

*Area Director,
New York Seaport.*

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,
New York, NY, May 8, 1991.

CLA-2-84:S:N:103 862517

Category: Classification

Tariff No. 8479.89.9076 and 8514.30.0040

MR. MICHAEL MORGAN
KOKUSAI ELECTRIC CO., LTD. AMERICA
1961 Concourse Drive, Suite C
San Jose, CA 95131-1729

Re: The tariff classification of semiconductor manufacturing machines from Japan.

DEAR MR. MORGAN:

In your letter dated April 5, 1991 you requested a tariff classification ruling.

Your inquiry concerns the Vertron-III vertical diffusion/LPCVD system. The Vertron-III is available in two models: Model DJ803V, which is used to deposit thin films onto the sur-

face of a silicon wafer, and Model DD803V, which is a furnace used to oxidize or diffuse silicon wafers. These models are essentially the same as the Models DJ802V and DD802V which were the subject of a previous ruling letter, file number 855845 dated September 14, 1990. Whereas the older models were able to process wafers up to six inches in diameter, the DJ803V and DD803V can handle eight inch diameter wafers.

The applicable subheading for the Model DJ803V LPCVD machine will be 8479.89.9076, Harmonized Tariff Schedule of the United States (HTS), which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere: Chemical vapor deposition (CVD) apparatus including low pressure and plasma enhanced systems. The rate of duty will be 3.7 percent *ad valorem*.

The applicable subheading for the Model DD803V oxidation/diffusion furnace will be 8514.30.0040, HTS, which provides for other furnaces and ovens for diffusion, oxidation or annealing of semiconductor wafers. The rate of duty will be 2.5 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, November 25, 1996.
CLA-2-84:RR:NC:1:104 A89407
Category: Classification
Tariff No. 8456.91.0000, 8479.89.8590,
8514.30.2000, and 9030.82.0000

MR. DAVID KIRBY
TOKYO ELECTRON AMERICA, INC.
2400 Grove Boulevard
Austin, TX 78741

Re: The tariff classification of semiconductor production and test equipment from Japan.

DEAR MR. KIRBY:

In your letter dated October 31, 1996 you requested a tariff classification ruling.

The Clean Track Mark 7 and Mark 8 coater/developer machines are capable of processing semiconductor wafers 6 inches to 8 inches in diameter. They basically consist of a spinner unit in which a photosensitive resist material is coated onto the surface of the wafer, ovens or hot plates where a "soft" bake of the photoresist is performed, a spray developer unit for developing the resist after exposure, and additional ovens for "hard" baking the photoresist. In between the coating and developing processes, circuit pattern exposure is performed by means of separate exposure equipment which is not shipped with the Clean Track machines. The Mark 7 and Mark 8 also incorporate a vacuum-less, low contact wafer handler for transporting the wafers through the various process modules. The entire coater/developer system resides in an enclosed housing which controls airflow within the system to ensure wafer cleanliness.

You indicate that TEL's vertical furnaces are used for diffusion, oxidation, annealing, or low pressure chemical vapor deposition (LPCVD) on silicon wafers. All machine configurations use high temperatures (500-1200 degrees centigrade) and process gases to effect a change to the silicon wafer—either modification of the atomic structure, growing a layer of silicon dioxide, or deposition of a new layer. The LPCVD furnace primarily differs from the others only by the addition of a vacuum system. Neither system makes use of plasma.

TEL's etchers create electrically active features on a semiconductor wafer through the chemical and physical removal of substrate material by the application of magnetically confined plasma or enhanced plasma (dry etch). The plasma, excited by a 380 KHz or 13.56 MHz radio frequency source, confined by a gradient field dipole ring magnet assembly, and

at pressure between 20-1,500 milliTorr, is used to etch features into the dielectric film such as transistor junctions, gates, capacitors, etc. The machine features simultaneous wafer handling, multiple processing chambers, and can be configured for multiple simultaneous wafer processing.

TEL's probes are used to test the electrical properties and integrity of processed silicon wafers or individual integrated circuits. The probe interfaces with a separate tester (not sold or shipped by TEL) which performs the actual analysis of the electrical signals. The probe holds the device to be tested, handles the precise alignment of the electrical contacts, steps through each device to be tested, automates the wafer handling, and acts as an interface between the tester and the device to be tested. Optionally, the probe may include a recording device.

The applicable subheading for the Clean Track will be 8479.89.8590, Harmonized Tariff Schedule of the United States (HTS), which provides for machines for processing of semiconductor materials; machines for production and assembly of diodes, transistors and similar semiconductor devices and electronic integrated circuits: other. The rate of duty will be free.

The applicable subheading for the vertical furnaces for diffusion, oxidation or annealing (without the vacuum system) will be 8514.30.2000, HTS, which provides for industrial or laboratory electric furnaces and ovens; * * *: other furnaces and ovens: for diffusion, oxidation or annealing of semiconductor wafers. The rate of duty will be free.

The LPCVD furnace (with the vacuum system) is classified under HTS subheading 8479.89.8576 which provides for machines for processing of semiconductor materials; machines for production and assembly of diodes, transistors and similar semiconductor devices and electronic integrated circuits: chemical vapor deposition (CVD) apparatus including low pressure and plasma enhanced systems. The rate of duty will be free.

You have stated that this classification of the LPCVD furnace is consistent with NY ruling 818472 of February 20, 1996. You believe however that it conflicts with NY ruling A81746 of April 17, 1996 which classified a LPCVD furnace under 8514.30.2000. The latter ruling addressed the classification of only the furnace portion of an LPCVD system (imported without the vacuum system). It is our understanding that the LPCVD process can only be accomplished in a unit which incorporates a vacuum system.

The applicable subheading for the etchers will be 8456.91.0000, HTS, which provides for machine tools for working any material by removal of material by laser * * * or plasma arc processes: other: for dry etching patterns on semiconductor materials. The rate of duty will be free.

The applicable subheading for the probes will be 9030.82.0000, HTS, which provides for other instruments and apparatus for measuring or checking electrical quantities: for measuring or checking semiconductor wafers or devices. The rate of duty will be free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert Losche at 212-466-5670.

ROGER J. SILVESTRI,

Director,

National Commodity Specialist Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 961005 JAS
Category: Classification
Tariff No. 8514.10.40 and 8514.10.80

Mr. DARRELL SEKIN JR.
DJS INTERNATIONAL SERVICES, INC.
P.O. Box 612785
DFW Airport, TX 75261

Re: NY 818472 and NY A81746 revoked; industrial furnace for diffusion, oxidation or annealing of semiconductor wafers, Subheading 8514.30.20; other resistance heated furnace; GRI 6.

DEAR MR. SEKIN:

In NY 818472, dated February 20, 1996, the Director, National Commodity Specialist Division, New York, responded to your ruling request on behalf of **Tokyo Electron Oregon** and confirmed that the ALPHA-8D vertical furnace for the oxidation of semiconductor wafers was classifiable in subheading 8514.30.20, Harmonized Tariff Schedule of the United States (HTSUS), as other industrial or laboratory electric furnaces and ovens, and that the ALPHA-8C LP-CVD, a furnace incorporating a low pressure chemical vapor deposition unit, was classifiable in subheading 8479.89.85, HTSUS, as a machine or mechanical appliance having individual functions.

NY A81746, dated April 17, 1996, amended NY 818472 by clarifying that in addition to the model 8D vertical furnace only the furnace component of the ALPHA-8C LP-CVD was being imported. We now believe that these rulings may be incorrect.

Facts:

The ALPHA-8D vertical diffusion furnace was described in the ruling request as a furnace operating at atmospheric pressure with a normal temperature range of 850 to 1200 degrees Centigrade, that is capable of oxide diffusion or oxidation, oxide deposition, or annealing, all operations used in preparing the surface of semiconductor wafers for later manufacturing operations. The ALPHA-8C furnace, operating at temperatures of between 500 and 850 degrees Centigrade, was described as a component of a low pressure chemical vapor deposition (LPCVD) system for the processing of semiconductor wafers using low pressure chemical vapor deposition. Vapor deposition technology involves the successive layering of thin films onto wafer substrates to form inductive coils, poles and connectors on the wafers which result in specific, measurable micro levels of semiconductor.

The provisions under consideration are as follows:

8514	Industrial or laboratory electric * * * furnaces and ovens * * *; parts thereof:
8514.10	Resistance heated furnaces and ovens:
8514.10.40	For the manufacture of semiconductor devices on semiconductor wafers
8514.10.80	Other
8514.30	Other furnaces and ovens:
8514.30.20	For diffusion, oxidation or annealing of semiconductor wafers

Issue:

Whether the ALPHA-8D vertical furnace and the 8C furnace component of the ALPHA-8 LPCVD are resistance heated.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 6 states in part that the classifi-

cation of goods in the subheadings of a heading shall be according to the terms of those subheadings and any related subheading notes, and to Rules 1 through 5 applied by appropriate substitution of terms. Only subheadings at the same level are comparable.

The **Harmonized Commodity Description and Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The subheading 8514.30.20, HTSUS, classification expressed in NY 818472 and in NY A81746 with respect to the ALPHA 8C and 8D furnaces was based on insufficient information as to their source of heat. It now appears that both furnace models are, in fact, resistance heated, that is, the heating element is a metal resistance wire that is wrapped around the outside of the furnace tube to provide even heat throughout the zone. Alternating current from an element transformer heats the wire. Relevant ENs at p. 1463, state that electric furnaces and ovens of heading 85.14 are of many types used for many purposes. They are described as consisting essentially of a more or less closed space or vessel in which a relatively high temperature is obtained. Among the furnaces and ovens covered by heading 85.14 are (A) **Resistance heated furnaces and ovens** in which the heat is produced by the passage of a current through heating resistors (Emphasis original). The ALPHA-8D vertical diffusion furnace and the furnace component of the ALPHA-8C LP-CVD system both meet this description.

For purposes of GRI 6, the furnace units will be classified in the subheading of heading 8514 that most narrowly and specifically describes them, that is, the subheading having the requirements that are the more difficult to satisfy. In this case, subheading 8514.10 describes a particular group of furnaces by their singular source of heat but without regard to any specific function they may perform. Subheading 8514.30 on the other hand, describes a residual group of furnaces but not those that are resistance heated. It is apparent that no resistance heated furnaces can be classified in subheading 8514.30 but that furnaces for diffusion, oxidation or annealing can be classified in subheading 8514.10 if they are resistance heated. Therefore, we conclude that subheading 8514.10, HTSUS, is a more specific provision for the furnace units in issue than is subheading 8514.30, HTSUS.

Holding:

Under the authority of GRI 1, made applicable at the subheading level through GRI 6, the ALPHA-8D vertical diffusion furnace and the model 8C furnace unit for the ALPHA-8 LPCVD system are provided for in heading 8514. They are classifiable in subheadings 8514.10.40 or 8514.10.80, HTSUS, as appropriate.

NY 818472, dated February 20, 1996, and NY A81746, dated April 17, 1996, are revoked.

JOHN DURANT,

Director,

Commercial Rulings Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY
 U.S. CUSTOMS SERVICE,
 Washington, DC.
 CLA-2 RR:CR:GC 961329 JAS
 Category: Classification
 Tariff No. 8514.10.40 and 8514.10.80

MR. SHUMEI NAGAYA
 KOKUSAI ELECTRIC CO., LTD. AMERICA
 3000 Marcus Avenue, Suite 3E11
 Lake Success, NY 11042

Re: NY 855845 modified; oxidation/diffusion furnace, resistance heated furnace; Subheading 8514.30.20, other furnaces for diffusion, oxidation or annealing of semiconductor wafers; GRI 6.

DEAR MR. NAGAYA:

NY 855845, which the Area Director of Customs, New York Seaport, issued to you on September 14, 1990, in part classified a vertical diffusion furnace in subheading 8514.30.00, Harmonized Tariff Schedule of the United States (HTSUS), as other furnaces for diffusion, oxidation or annealing of semiconductor wafers. We now believe that the classification of this furnace may be incorrect.

Facts:

The merchandise in issue is the VERTRON model DD-802V vertical diffusion furnace designed to oxidize/diffuse the surface of silicon semiconductor wafers to prepare them for further processing. It has a working temperature range of between 400 to 1,200 degrees Centigrade and weighs between 1,300 and 1,700 kg. NY 855845 also addressed the VERTRON model DJ-802V which combines a furnace unit with a vacuum pump into a low pressure chemical vapor deposition (LPCVD) system. The classification of the model DJ-802V is not in issue here.

The provisions under consideration are as follows:

8514	Industrial or laboratory electric * * * furnaces and ovens * * *; parts thereof:
8514.10	Resistance heated furnaces and ovens:
8514.10.40	For the manufacture of semiconductor devices on semiconductor wafers
8514.10.80	Other
8514.30	Other furnaces and ovens:
8514.30.20	For diffusion, oxidation or annealing of semiconductor wafers

Issue:

Whether the VERTRON model DD-802V vertical diffusion furnace is resistance heated.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 6 states in part that the classification of goods in the subheadings of a heading shall be according to the terms of those subheadings and any related subheading notes, and to Rules 1 through 5 applied by appropriate substitution of terms. Only subheadings at the same level are comparable.

The **Harmonized Commodity Description and Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the **ENs** should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The subheading 8514.30.00, HTSUS, classification expressed in NY 855845 with respect to the VERTRON model DD-802V furnace was based on insufficient information as to its

source of heat. It now appears that this furnace is, in fact, resistance heated, that is, the heating element is a metal resistance wire that is wrapped around the outside of the furnace tube to provide even heat throughout the zone. Alternating current from an element transformer heats the wire. Relevant ENs at p. 1463, state that electric furnaces and ovens of heading 85.14 are of many types used for many purposes. They are described as consisting essentially of a more or less closed space or vessel in which a relatively high temperature is obtained. Among the furnaces and ovens covered by heading 85.14 are (A) **Resistance heated furnaces and ovens** in which the heat is produced by the passage of a current through heating resistors (Emphasis original). The VERTRON model DD-802V furnace meets this description.

For purposes of GRI 6, this furnace will be classified in the subheading of heading 8514 that most narrowly and specifically describes it, that is, the subheading having the requirements that are the more difficult to satisfy. In this case, subheading 8514.10 describes a particular group of furnaces by their singular source of heat but without regard to any specific function they may perform. Subheading 8514.30 on the other hand, describes a residual group of furnaces but not those that are resistance heated. It is apparent that no resistance heated furnaces can be classified in subheading 8514.30 but that furnaces designed to oxidize and/or diffuse silicon wafers can be classified in subheading 8514.10 if they are resistance heated. Therefore, we conclude that subheading 8514.10, HTSUS, is a more specific provision for the instant furnace than is subheading 8514.30, HTSUS.

Holding:

Under the authority of GRI 1, made applicable at the subheading level through GRI 6, the VERTRON model DD-802V vertical diffusion furnace is provided for in heading 8514. It is classifiable in subheadings 8514.10.40 or 8514.10.80, HTSUS, as appropriate.

NY 855845, dated September 14, 1990, is modified with respect to the VERTRON model DD-802V vertical diffusion furnace.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:GC 961330 JAS
Category: Classification
Tariff No. 8514.10.40 and 8514.10.80

MR. MICHAEL MORGAN
KOKUSAI ELECTRIC CO., LTD. AMERICA
1961 Concourse Drive, Suite C
San Jose, CA 95131-1729

Re: NY 862517 modified; oxidation/diffusion furnace, resistance heated furnace; Subheading 8514.30.20, other furnaces for diffusion, oxidation or annealing of semiconductor wafers; GRI 6.

DEAR MR. MORGAN:

NY 862517, which the Area Director of Customs, New York Seaport, issued to you on May 8, 1991, in part classified a vertical diffusion furnace in subheading 8514.30.00, Harmonized Tariff Schedule of the United States (HTSUS), as other furnaces for diffusion, oxidation or annealing of semiconductor wafers. We now believe that the classification of this furnace may be incorrect.

Facts:

The merchandise in issue is the VERTRON model DD-803V vertical diffusion furnace designed to oxidize/diffuse the surface of silicon semiconductor wafers to prepare them for

further processing. It has a working temperature range of between 400 to 1,150 degrees Centigrade and weighs approximately 1,500 kg. NY 862517 also addressed the VERTRON model DJ-803V which combines a furnace unit with a vacuum pump into a low pressure chemical vapor deposition (LPCVD) system. The classification of the model DJ-803V is not in issue here.

The VERTRON models DD-803V and DJ-803V are successor models to the VERTRON models DD-802V and DJ-802V, the classification of which was addressed in NY 855845, dated September 14, 1990. The principal difference is that the older models process wafers up to six inches in diameter whereas the newer models can process 8-inch diameter wafers.

The provisions under consideration are as follows:

8514	Industrial or laboratory electric * * * furnaces and ovens * * *; parts thereof:
8514.10	Resistance heated furnaces and ovens:
8514.10.40	For the manufacture of semiconductor devices on semiconductor wafers
8514.10.80	Other
8514.30	Other furnaces and ovens:
8514.30.20	For diffusion, oxidation or annealing of semiconductor wafers

Issue:

Whether the VERTRON model DD-803V vertical diffusion furnace is resistance heated.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 6 states in part that the classification of goods in the subheadings of a heading shall be according to the terms of those subheadings and any related subheading notes, and to Rules 1 through 5 applied by appropriate substitution of terms. Only subheadings at the same level are comparable.

The **Harmonized Commodity Description and Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The subheading 8514.30.00, HTSUS, classification expressed in NY 862517 with respect to the VERTRON model DD-803V furnace was based on insufficient information as to its source of heat. It now appears that this furnace is, in fact, resistance heated, that is, the heating element is a metal resistance wire that is wrapped around the outside of the furnace tube to provide even heat throughout the zone. Alternating current from an element transformer heats the wire. Relevant ENs at p. 1463, state that electric furnaces and ovens of heading 85.14 are of many types used for many purposes. They are described as consisting essentially of a more or less closed space or vessel in which a relatively high temperature is obtained. Among the furnaces and ovens covered by heading 85.14 are (A) **Resistance heated furnaces and ovens** in which the heat is produced by the passage of a current through heating resistors (Emphasis original). The VERTRON model DD-803V furnace meets this description.

For purposes of GRI 6, this furnace will be classified in the subheading of heading 8514 that most narrowly and specifically describes it, that is, the subheading having the requirements that are the more difficult to satisfy. In this case, subheading 8514.10 describes a particular group of furnaces by their singular source of heat but without regard to any specific function they may perform. Subheading 8514.30 on the other hand, describes a residual group of furnaces but not those that are resistance heated. It is apparent that no resistance heated furnaces can be classified in subheading 8514.30 but that furnaces designed to oxidize and/or diffuse silicon wafers can be classified in subheading 8514.10 if they are resistance heated. Therefore, we conclude that subheading 8514.10, HTSUS, is a more specific provision for the instant furnace than is subheading 8514.30, HTSUS.

Holding:

Under the authority of GRI 1, made applicable at the subheading level through GRI 6, the VERTRON model DD-803V vertical diffusion furnace is provided for in heading 8514. It is classifiable in subheadings 8514.10.40 or 8514.10.80, HTSUS, as appropriate.

NY 862517, dated May 8, 1991, is modified with respect to the VERTRON model DD-803V vertical diffusion furnace.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:GC 961332 JAS
Category: Classification
Tariff No. 8514.10.40 and 8514.10.80

MR. DAVID KIRBY
TOKYO ELECTRON AMERICA, INC.
2400 Grove Boulevard
Austin, TX 78741

Re: NY A89407 modified; oxidation/diffusion furnace, resistance heated furnace; Subheading 8514.30.20, other furnaces for diffusion, oxidation or annealing of semiconductor wafers; GRI 6.

DEAR MR. KIRBY:

NY A89407, which the Director, National Commodity Specialist Division, New York, issued to you on November 25, 1996, in part classified a vertical diffusion furnace in subheading 8514.30.20, Harmonized Tariff Schedule of the United States (HTSUS), as other furnaces for diffusion, oxidation or annealing of semiconductor wafers. We now believe that the classification of this furnace may be incorrect.

Facts:

The merchandise in issue is the Tokyo Electron (TEL) vertical diffusion furnace designed to oxidize/diffuse the surface of silicon semiconductor wafers to prepare them for further processing. It has a working temperature range of between 500 to 1,200 degrees Centigrade. NY A89407 also addressed the classification of the TEL low pressure chemical vapor deposition (LPCVD) system, the TEL Clean Track Mark 7 and Mark 8 coater/developer machines, the TEL etchers and TEL probers. The classification of these machines is not in issue here.

The provisions under consideration are as follows:

8514	Industrial or laboratory electric * * * furnaces and ovens * * *, parts thereof:
8514.10	Resistance heated furnaces and ovens:
8514.10.40	For the manufacture of semiconductor devices on semiconductor wafers
8514.10.80	Other
8514.30	Other furnaces and ovens:
8514.30.20	For diffusion, oxidation or annealing of semiconductor wafers

Issue:

Whether the TEL vertical diffusion furnace is resistance heated.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in

part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRI 2 through 6. GRI 6 states in part that the classification of goods in the subheadings of a heading shall be according to the terms of those subheadings and any related subheading notes, and to Rules 1 through 5 applied by appropriate substitution of terms. Only subheadings at the same level are comparable.

The **Harmonized Commodity Description and Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the **ENs** should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The subheading 8514.30.20, HTSUS, classification expressed in NY 855845 with respect to the TEL vertical diffusion furnace was based on insufficient information as to its source of heat. It now appears that this furnace is, in fact, resistance heated, that is, the heating element is a metal resistance wire that is wrapped around the outside of the furnace tube to provide even heat throughout the zone. Alternating current from an element transformer heats the wire. Relevant **ENs** at p. 1463, state that electric furnaces and ovens of heading 85.14 are of many types used for many purposes. They are described as consisting essentially of a more or less closed space or vessel in which a relatively high temperature is obtained. Among the furnaces and ovens covered by heading 85.14 are (A) **Resistance heated furnaces and ovens** in which the heat is produced by the passage of a current through heating resistors (Emphasis original). The VERTRON model DD-802V furnace meets this description.

For purposes of GRI 6, this furnace will be classified in the subheading of heading 8514 that most narrowly and specifically describes it, that is, the subheading having the requirements that are the more difficult to satisfy. In this case, subheading 8514.10 describes a particular group of furnaces by their singular source of heat but without regard to any specific function they may perform. Subheading 8514.30 on the other hand, describes a residual group of furnaces but not those that are resistance heated. It is apparent that no resistance heated furnaces can be classified in subheading 8514.30 but that furnaces designed to oxidize and/or diffuse silicon wafers can be classified in subheading 8514.10 if they are resistance heated. Therefore, we conclude that subheading 8514.10, HTSUS, is a more specific provision for the instant furnace than is subheading 8514.30, HTSUS.

Holding:

Under the authority of GRI 1, made applicable at the subheading level through GRI 6, the TEL vertical diffusion furnace is provided for in heading 8514. It is classifiable in subheadings 8514.10.40 or 8514.10.80, HTSUS, as appropriate.

NY A89407, dated November 25, 1996, is modified with respect to the TEL vertical diffusion furnace.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF MENTHOLATED LOZENGES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)] as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the classification of mentholated lozenges.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Romero, Attorney-Advisor, Commercial Rulings Division at 202-927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In NY 837090, dated February 28, 1989, Customs classified "Fisherman's Friend" mentholated lozenges in subheading 3004.90.30, Harmonized Tariff Schedule of the United States (HTSUS), which provided for medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: other: cough drops. Subsequently, the Harmonized Commodity Description and Coding System Explanatory Notes were revised such that "Fisherman's Friend" could no longer be classified as a medicament of chapter 30, HTSUS. In view of this change, on June 7, 1995, a notice of proposed revocation of NY 837090 was published in the CUSTOMS BULLETIN, Volume 29, Number 23. The only comment received in response to the notice was subsequently withdrawn.

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)] as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NY 837090 to reflect the proper tariff classification of "Fisherman's Friend" mentholated lozenges in subheading 1704.90, HTSUS, which provides for sugar confectionary (including white chocolate), not containing cocoa: other.

Mentholated lozenges containing a minimum of 5 mg per dose of menthol, eucalyptol, or of a combination of both, are cough drops classifiable in subheading 1704.90.25, HTSUS, covering Sugar confectionary (including white chocolate), not containing cocoa: Other: Confections of sweetmeats ready for consumption: Other: Cough drops. Mentholated lozenges which do not contain at least 5 mg per dose of these ingredients are classifiable in subheading 1704.90.35, HTSUS, for Sugar

confectionary (including white chocolate), not containing cocoa: Other: Confections of sweetmeats ready for consumption: Other: Cough drops; Other:

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: February 5, 1997.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, February 5, 1998.

CLA-2 RR:CR:GC 957394 RTR
Category: Classification
Tariff No. 1704.90

MR. JOHN M. POOLE
JOHN A. STEERE CO.
28 South Second Street
Philadelphia, PA 19106

Re: "Fisherman's Friend" Mentholated lozenges; headings 1704, 3004; subheadings 1704.90, 1704.90.25, 1704.90.35, 3004.90.30; chapter note 17.11; EN 30.04; NY 837090 revoked.

DEAR MR. POOLE:

This is in reference to NY 837090, which was issued to you on February 28, 1989, in response to your request of February 13, 1989, regarding the tariff classification of "Fisherman's Friend" mentholated lozenges under the Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub L. 103-182, 107 Stat. 2057, 2186 (1993), notice of proposed revocation of NY 837090 was published on June 7, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 23.

Facts:

The merchandise is known commercially as "Fisherman's Friend" mentholated lozenges, and is composed of menthol (0.900%), eucalyptus oil (0.153%), tincture of capsicum (0.020%), licorice (7.317%), gum tragacanth (0.330%), dextrin (2.250%), sugar (87.000%), and water (2.030%). It is manufactured in the U.K. by Lofthouse of Fleetwood, Ltd.

Issue:

Whether a mentholated lozenge, which lacks a substance with medicinal properties, is classifiable in heading 1704, HTSUS, or in heading 3004, HTSUS.

Law and Analysis:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRI). GRI 1 states in part that for legal purposes, classification shall be

determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The tariff provisions under consideration are as follows:

1704	Sugar confectionary (including white chocolate), not containing cocoa:
1704.90	Other:
	Confections of sweetmeats ready for consumption:
	Other:
1704.90.25	Cough drops
1704.90.35	Other
*	*
3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale
3004.90.30	Other
*	*

Chapter 17 Note 11

For purposes of subheading 1704.90.25, "cough drops" must contain a minimum of 5 mg per dose of menthol, of eucalyptol, or of a combination of menthol and eucalyptol.

EN 30.04 at page 469

"However, preparations put up as throat pastilles or cough drops, consisting essentially of sugars (whether or not with other food stuffs such as gelatin, starch or flour) and flavouring agents (including substances having medicinal properties, such as benzol alcohol, menthol, eucalyptol, and tolu balsam) fall in Heading 1704. Throat pastilles containing substances having medicinal properties, other than flavouring agents, remain classified in this heading when put up in measured doses or in forms or packings for retail sale, provided that the proportion of those substances in each pastille or drop is such that they are thereby given therapeutic or prophylactic uses."

On February 28, 1989, Customs issued NY 837090, classifying "Fisherman's Friend" mentholated lozenges in subheading 3004.90.30, HTSUS, which provided for medicaments * * * consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: other. Subsequently, the definition of cough drops, or throat pastilles, contained in the Explanatory Notes were revised to read: "However, preparations put up as throat pastilles or cough drops, consisting essentially of sugars (whether or not with other food stuffs such as gelatin, starch or flour) and flavouring agents (including substances having medicinal properties, such as benzol alcohol, menthol, eucalyptol, and tolu balsam) fall in Heading 1704. Throat pastilles containing substances having medicinal properties, other than flavouring agents, remain classified in this heading when put up in measured doses or in forms or packings for retail sale, provided that the proportion of those substances in each pastille or drop is such that they are thereby given therapeutic or prophylactic uses." EN 30.04 at page 469.

In view of the ENs, "Fisherman's Friend" mentholated lozenges could no longer be classified as a medicament of chapter 30, HTSUS, because they lack a medicinal substance. Additionally, the flavoring agents, menthol and eucalyptus oil, are not classifiable as medicaments in heading 3004, HTSUS. Therefore, on June 7, 1995, a notice of proposed revocation of NY 837090 was published in the CUSTOMS BULLETIN, Volume 29, Number 23. The only comment received in response to the notice was subsequently withdrawn.

"Fisherman's Friend" mentholated lozenges are classifiable in subheading 1704.90, HTSUS, which provides for sugar confectionary (including white chocolate), not containing cocoa: other. Mentholated lozenges containing a minimum of 5 mg per dose of menthol, eucalyptol, or of a combination of both, are cough drops classifiable in subheading 1704.90.25, HTSUS, covering Sugar confectionary (including white chocolate), not con-

taining cocoa: Other: Confections of sweetmeats ready for consumption: Other: Cough drops. Mentholated lozenges which do not contain at least 5 mg per dose of these ingredients are classifiable in subheading 1704.90.35, HTSUS, for Sugar confectionary (including white chocolate), not containing cocoa: Other: Confections of sweetmeats ready for consumption: Other: Cough drops; Other.

Holding:

Pursuant to GRI 1, HTSUS, "Fisherman's Friend" mentholated lozenges are classifiable in subheading 1704.90, HTSUS, which provides for sugar confectionary (including white chocolate), not containing cocoa: other. Mentholated lozenges containing a minimum of 5 mg per dose of menthol, eucalyptol, or of a combination of both, are cough drops classifiable in subheading 1704.90.25, HTSUS, covering Sugar confectionary (including white chocolate), not containing cocoa: Other: Confections of sweetmeats ready for consumption: Other: Cough drops. Mentholated lozenges which do not contain at least 5 mg per dose of these ingredients are classifiable in subheading 1704.90.35, HTSUS, for Sugar confectionary (including white chocolate), not containing cocoa: Other: Confections of sweetmeats ready for consumption: Other: Cough drops; Other.

Effect on Other Rulings:

NY 837090, dated February 28, 1989, is revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF ACF AND ACS CATALYSTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking three rulings pertaining to the tariff classification of ACF and ACS catalysts.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Edward A. Bohannon, Senior Attorney, Commercial Rulings Division, (202) 927-1613.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 24, 1997, Customs published in the CUSTOMS BULLETIN, in Volume 31, Number 52, a Notice of a proposal to revoke NY 843676

dated August 1, 1989, NY 864023 dated June 26, 1991, and NY 864023 Amended dated September 16, 1991, which, collectively, held that certain supported and unsupported catalysts were classifiable under various subheadings of heading 3815, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). No comments were received in response to that Notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NY 843676, NY 864023 and NY 864023 Amended to reflect the proper tariff classification of ACF and ACS catalysts, as more fully set forth in Headquarters Ruling Letter 957551 attached to this Notice.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: February 9, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
Washington, DC, February 9, 1998.
CLA-2 RR:CR:GC 957551 EAB
Category: Classification
Tariff No. 3815.19.0000 and 3815.90.3000

MS. JOAN MENDLER
UNION CARBIDE CHEMICALS AND PLASTICS COMPANY INC.
PURCHASING AND DISTRIBUTION DEPARTMENT
39 Old Ridgebury Road
Danbury, CT 06817-0001

Re: ACS and ACF catalysts; NY 843676, NY 864023 and NY 864023 Amended revoked.

DEAR MS. MENDLER:

This is in reference to your letter of January 13, 1995, requesting reconsideration of NY 843676, NY 864023 and NY 864023 Amended, regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of ACS and ACF catalysts. We have reviewed those rulings and determined that they no longer reflect the correct classification of these articles.

This letter is to inform you that NY 843676, NY 864023 and NY 864023 Amended are revoked in accordance with section 177.9(d) of the Customs Regulations (19 CFR 177.9(d)). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agree-

ment Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY 843676, NY 864023 and NY 864023 Amended was published on December 24, 1997, in the CUSTOMS BULLETIN, in Volume 31, Number 52. No comments were received. The following represents our position.

Facts:

In Customs Ruling Letter NY 843676, issued on August 1, 1989, Customs classified an "ACS supported catalyst containing the oxides of aluminum, molybdenum, vanadium and copper and silica" in subheading 3815.19.0000, Harmonized Tariff Schedule of the United States (Annotated) (HTSUSA), a provision for "Other" supported catalysts.

In Customs Ruling Letter NY 864023, issued June 26, 1991, Customs classified ACS and ACF catalysts in subheading 3815.19.0000, HTSUSA.

In Customs Ruling Letter NY 864023 Amended, issued September 16, 1991, Customs reclassified ACS and ACF catalysts in subheading 3815.90.1000, HTSUSA, the provision for products of heading 3815 other (than supported catalysts), consisting wholly of inorganic substances, of bismuth, of tungsten or of vanadium.

Customs Laboratory Report of analysis of the products indicates that the ACS catalyst is a supported catalyst, utilizing aluminum oxide as the support for additional components identified as silica and oxides of molybdenum, vanadium and copper. The ACF catalyst is an unsupported "neat metal" catalyst composed of silica and oxides of molybdenum, bismuth and iron.

Issue:

Whether ACS and ACF catalysts are classified in the same subheading of the HTSUSA or separately under the same heading.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order.

Heading 3815, HTSUSA, describes "Reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included." Thereunder, a distinction is made between "supported catalysts" in subheadings 3815.11 through 3815.19, and unsupported, i.e. "other" catalysts in subheading 3815.90. Furthermore, the HTSUSA distinguishes among unsupported catalysts consisting wholly of bismuth, tungsten or vanadium (subheading 3815.90.1000, or wholly of mercury or molybdenum (subheading 3815.90.2000, or wholly of "other" inorganic substances (3815.90.3000).

We find that ACS catalyst is properly classifiable in subheading 3815.19.0000, HTSUSA, and that ACF catalyst is properly classifiable in subheading 3815.90.3000, HTSUSA.

Holding:

ACS supported catalyst utilizing aluminum oxide as a support for silica and oxides of molybdenum, vanadium and copper is classifiable in subheading 3815.19.0000, HTSUSA, and may be entered free of duty for calendar year 1997.

ACF catalyst, an unsupported "neat metal" catalyst composed of silica and oxides of molybdenum, bismuth and copper is classifiable in subheading 3815.90.3000, HTSUSA, and may be entered free of duty for calendar year 1997.

NY 843676, NY 864023 and NY 864023 Amended are revoked.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER RELATING
TO TARIFF CLASSIFICATION OF "MINITRAN," A
NITROGLYCERIN TRANSDERMAL DELIVERY SYSTEM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of "Minitran", a nitroglycerin Transdermal Delivery System. Customs invites comments on the correctness of the proposed revocation.

DATE: Comments must be received on or before March 27, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to and may be inspected at the U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, DC. 20229.

FOR FURTHER INFORMATION CONTACT: John G. Black, Senior Attorney, Commercial Rulings Division, (202) 927-1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of "Minitran", a nitroglycerin Transdermal Delivery System as more fully described in this Notice and the attachments (A and B) hereto. Customs invites comments on the correctness of the proposed revocation.

In New York Ruling Letter (NY) 881926, issued on January 22, 1993, Customs ruled that "Minitran", a nitroglycerin Transdermal Delivery System was classifiable in subheading 3005.10.1000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for "Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances." NY 881926 is set forth in "Attachment A" to this document.

This ruling was brought to Customs attention as being inconsistent with Customs position with respect to other transdermal administra-

tion systems that dispense such medicinal substances as estrogen and nicotine. Those transdermal administration systems are classified as medicaments in heading 3004. Therefore, the classification of "Minitran" would, likewise, be in heading 3004 HTSUSA to maintain conformity in principle.

Customs intends to revoke NY 881926 to reflect the proper classification of "Minitran", a transdermal nitroglycerin delivery system and a medicament of heading 3004, HTSUSA. Before taking this action, we will give consideration to any written comments timely received. Proposed Headquarters Ruling Letter (HQ) 961177 is set forth as "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: February 4, 1998.

MARNIN AMERNICK,
(for John A. Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, January 22, 1993.
CLA-2-30:S:N:7:238 881926
Category: Classification
Tariff No. 3005.10.1000

MR. JACK RYAN
3M CENTER, TRANSPORTATION DEPT.
P.O. Box 33250
St. Paul, MN 55133-3250

Re: The tariff classification of "Minitran", a nitroglycerin Transdermal Delivery System from Italy.

DEAR MR. RYAN:

In your letter dated January 8, 1993, you requested a tariff classification ruling.

"Minitran", is a nitroglycerin Transdermal Delivery System. The product consists of a plastic film patch coated with an acrylate based polymer adhesive containing Nitroglycerin as the active ingredient. When the patch is affixed to the skin "Minitran" is designed to provide continuous, controlled release of nitroglycerin for people suffering from chronic angina.

The applicable subheading for the "Minitran", Transdermal Delivery System will be 3005.10.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances * * *, Adhesive dressings and other articles having an adhesive layer, Coated or impregnated with pharmaceutical substances. The rate of duty will be 2.4 percent *ad valorem*.

Please note that imported merchandise should be marked in accordance with Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304).

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, MD 20857, telephone number (202) 443-3380.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,

*Area Director,
New York Seaport.*

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:GC 961177 JGB

Category: Classification

Tariff No. 3004.40.0010

MR. JACK RYAN

3M CENTER, TRANSPORTATION DEPT.

PO. Box 33250

St. Paul, MN 55133-3250

Re: Classification of "Minitran", a nitroglycerin Transdermal Delivery System from Italy;
NY 881926 Revoked.

DEAR MR. RYAN:

This is in reference to New York Ruling Letter (NY) 881926 issued to you on January 22, 1993, regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of "Minitran", a nitroglycerin Transdermal Delivery System from Italy. We have reviewed this ruling and determined that Customs erred in NY 881926 by classifying "Minitran" in subheading 3005.10.1000, HTSUSA.

This letter is to inform you that NY 881926 no longer reflects the view of Customs and that we intend to revoke it in accordance with section 625(c)(1), Tariff Act of 1930, as amended, and section 177.9(d) of the Customs Regulations (19 CFR 177.9(d)). The following represents our position.

Facts:

"Minitran", is a nitroglycerin Transdermal Delivery System. The product consists of a plastic film patch coated with an acrylate based polymer adhesive containing nitroglycerin as the active ingredient. When the patch is affixed to the skin "Minitran" is designed to provide continuous, controlled release of nitroglycerin for people suffering from chronic angina. Unlike a bandage that would be placed over a wound, cut, or break in the skin, the "Minitran" in use is held against the skin by the adhesive to permit the absorption of the nitroglycerin through the skin. A number of areas on the skin are particularly suitable for application of the "Minitran."

Issue:

Whether "Minitran" is classifiable as "Wadding, gauze bandages or similar articles" in heading 3005 or as "Medicaments (excluding goods of heading 3002, 3005 or 3006)" in heading 3004, HTSUSA.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S.

Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to the GRIs.

Heading 3005 provides for "Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes." Heading 3004 provides for "Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale."

Based on the exclusionary form of heading 3004, it is necessary to rule out the stated headings, in particular heading 3005, before heading 3004 can be considered. In our view, heading 3005 can be ruled out because the heading is inherently limited to articles ("bandages", "gauze", "wadding", "dressings, adhesive plasters and poultices" that function when applied to a particular area of the skin. By contrast, the "Minitran" functions by being placed in contact with the skin in an area where it may be absorbed, so that the medicament will be accepted by the whole organism and eventually arrive at a place in the body where it can be effective. In this instance, that area is the heart. Therefore, at the heading level, 3005 does not describe the entire product, requiring classification in heading 3004.

Heading 3004 covers this product not only by default from heading 3005, but also by its function of dispensing medication in "measured doses." The product is specifically covered by subheading 3004.40.0010, HTSUSA, the provision for "Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other, Other: Cardiovascular medicaments", free of duty under column one.

Holding:

"Minitran" is classified in subheading 3004.40.0010, HTSUSA, the provision for "Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other, Other: Cardiovascular medicaments", free of duty under column one.

NY 881926 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

**PROPOSED REVOCATION OF CUSTOMS RULING LETTER
RELATING TO TARIFF CLASSIFICATION OF THERMAL
IMAGING SYSTEM**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of the IRIS thermal imaging system (IRIS) under the Harmonized Tariff Schedule of the United States (HTSUS). Customs invites comments on the correctness of the proposed revocation.

DATE: Comments must be received on or before March 27, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, DC. 20229. Comments submitted may be inspected at the same office.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Attorney-Advisor, Commercial Rulings Division, (202) 927-2337.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of the IRIS, which is a thermal imaging system used by fire fighters to see through dense smoke. The system, which attaches to a fire fighter's helmet, is comprised of the following: a focal plane array sensor, processor/power module, and cable. The IRIS detects infrared radiation (heat) which is emitted directly by objects and materials. It is our understanding that thermal imaging devices, such as the IRIS, enable the user to view objects or materials in total darkness and through obscurants such as heavy smoke. The focal plane array sensor, which incorporates optical elements such as prisms, mirrors, and lenses, contains the infrared sensor which detects any heat energy. Customs invites comments on the correctness of the proposed modification.

In NY A83894, issued on June 18, 1996, Customs ruled that the IRIS is classifiable under subheading 8528.13.00, HTSUS, as television re-

ception apparatus. NY A83894 is set forth in "Attachment A" to this document.

It is now Customs position that the IRIS constitutes a functional unit and is properly classifiable under subheading 9013.80.90, HTSUS, as an other optical instrument, not specified or included elsewhere in chapter 90, HTSUS.

Customs intends to revoke NY A83894 to reflect the proper classification of the IRIS under subheading 9013.80.90, HTSUS. Before taking this action, we will give consideration to any written comments timely received. Proposed Headquarters ruling 961289 revoking NY A83894 is set forth as "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: February 5, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, June 18, 1996.
CLA-2-85:RR:NC:108:A83894
Category: Classification
Tariff No. 8528.13.0005

MR. L. KLESTADT
TRANS-WORLD SHIPPING CO.
53 Park Place
New York, NY 10007

Re: The tariff classification of an imaging system from England.

DEAR MR. KLESTADT:

In your letter dated May 16, 1996 you requested a tariff classification ruling on behalf of Cairns & Brother, Inc.

The literature accompanying your letter describes this item as a Thermal Imaging System. It is intended to be attached to a fireman's helmet, enabling the wearer to see through heavy smoke or darkness. The system consists of a helmet mounted CRT thermal video display, a helmet mounted CCD camera, counterweight balances for underbrim of helmet, cable link, rechargeable battery, and processor power module. Your letter states that these items will be shipped together.

The applicable subheading for this item will be 8528.13.0005, Harmonized Tariff Schedule of the United States (HTS), which provides for reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors: reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus: black and white or other monochrome; combined with radiobroad-

cast receivers or sound or video recording or reproducing apparatus, having a video display diagonal: not exceeding 16 cm. The rate of duty will be 5 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Phil Carabetta at 212-466-5672.

ROGER J. SILVESTRI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:GC 961289

Category: Classification

Tariff No. 9013.80.90

MS. KAREN M. SCHMICKER

CAIRNS & BROTHER INC.

P.O. Box 4076

Clifton, NJ 07012

Re: Reconsideration of NY A83894; IRIS Thermal Imaging System; Section XVI, Note 4; Chapter 90, Note 3; Functional Unit; Explanatory Note 90.27; Chapter 90, Additional U.S. Note 3; Optical Instrument; HQ 089170; 8528.13.00; 9027.50.80.

DEAR MS. SCHMICKER:

This is in response to your letter of November 25, 1997, to the Customs Commodity Specialist Division, New York, requesting reconsideration of NY A83894, issued to a Customs broker on behalf of Cairns & Brothier Inc. on June 18, 1996, concerning the classification of the IRIS thermal imaging system under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The merchandise consists of the IRIS thermal imaging system (IRIS), which is used by fire fighters to see through dense smoke. The system, which attaches to a fire fighter's helmet, is comprised of the following: a focal plane array sensor, processor/power module, and cable. A helmet mounted display and a rechargeable battery are used with the system; however, it is our understanding that neither one is imported with the system.

The IRIS detects infrared radiation (heat) which is emitted directly by objects and materials. It is our understanding that thermal imaging devices, such as the IRIS, enable the user to view objects or materials in total darkness and through obscurants such as heavy smoke. The focal plane array sensor, which incorporates optical elements such as prisms, mirrors, and lenses, contains the infrared sensor which detects any heat energy.

Issue:

Whether the IRIS is classifiable under subheading 8528.13.00, as television reception apparatus, under subheading 9013.80.90, HTSUS, as an other optical instrument, not specified or included elsewhere in chapter 90, HTSUS, or under subheading 9027.50.80, HTSUS, as an other instrument using optical radiation for measuring or checking quantities of heat.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8528	Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors: Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:
8528.13.00	Black and white or other monochrome.
9013	Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof:
9013.80	Other devices, appliances and instruments:
9013.80.90	Other.
9027	Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof:
9027.50	Other instruments and apparatus using optical radiations (ultra-violet, visible, infrared):
9027.50.80	Other.

Section XVI, note 4, HTSUS, states that:

[w]here a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole fails to be classified in the heading appropriate to that function.

Chapter 90, note 3, HTSUS, states that:

[t]he provisions of note 4 to section XVI apply also to this chapter.

As the IRIS consists of individual and interconnected components, if those components contribute together to a clearly defined function covered by a provision in chapters 84, 85, or 90, HTSUS, the IRIS will constitute a functional unit. We must now determine if such a provision exists.

In NY A83894, dated June 18, 1996, Customs held the IRIS to be classifiable under subheading 8528.13.00, HTSUS. In HQ 950591, dated December 23, 1991, we stated that:

[s]pecifically, infrared uses frequencies of the order of 10 (13th power) Hz. Therefore, infrared cannot be said to be encompassed by the terms radiotelephony, radiotelegraphy, radiobroadcasting or television, as delineated in heading 8527, HTSUS.

Based upon the reasoning in HQ 950591, because heading 8528, HTSUS, covers television reception apparatus, the IRIS, which utilizes infrared technology, is precluded from classification under subheading 8528.13.00, HTSUS.

You claim that the IRIS is a thermal analysis instrument which checks or measures quantities of heat, classifiable under subheading 9027.50.80, HTSUS. Based upon the information you have provided, the IRIS is a thermal imaging device which aids the user in seeing objects or materials through heavy smoke. You have not provided any evidence that the IRIS measures or checks quantities of heat or provides an analysis of thermal energy. Also, the IRIS does not appear similar to any of the many examples given in Harmonized Commodity Description and Coding System Explanatory Note 90.27 (pp. 1637-1643). Therefore, it is our position that the IRIS is not classifiable under subheading 9027.50.80, HTSUS.

Chapter 90, additional U.S. note 3, HTSUS, states that:

[f]or the purposes of this chapter the terms "optical appliances" and "optical instruments" refer only to those appliances and instruments which incorporate one or more

optical elements, but do not include any appliances or instruments in which the incorporated optical element or elements are solely for viewing a scale or for some other subsidiary purpose.

As previously stated, the IRIS contains optical elements. As it is our understanding that these elements are instrumental in the functioning of the IRIS, it is our position that they serve a primary function, and therefore the IRIS is an optical instrument as defined above.

Because the IRIS does not appear to be classifiable elsewhere in chapter 90, HTSUS, or in other chapters of the HTSUS, we find that its components constitute a functional unit, contributing together to the clearly defined function of an optical instrument covered by heading 9013, HTSUS. Specifically, the IRIS is classifiable under subheading 9013.80.90, HTSUS. See HQ 089170, dated January 4, 1993, for another example of merchandise classifiable as a functional unit in heading 9013, HTSUS.

Holding:

The IRIS thermal imaging system is classifiable under subheading 9013.80.90, HTSUS, as an other optical instrument, not specified or included elsewhere in chapter 90, HTSUS.

Effect on Other Rulings:

NY A83894 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF MULTI- FUNCTION MACHINE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of the MFC-1770 multifunction machine (MFC-1770) under the Harmonized Tariff Schedule of the United States (HTSUS). This multifunction machine, which operates on the principle of thermal transfer technology, is capable of performing printer, facsimile, copier, and scanner functions using a personal computer. Customs invites comments on the correctness of the proposed revocation.

DATE: Comments must be received on or before March 27, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the same office.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Attorney-Advisor, Commercial Rulings Division, (202) 927-2337.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of the MFC-1770. Customs invites comments on the correctness of the proposed modification.

In NY B87981, issued on August 5, 1997, Customs ruled that the MFC-1770 is classifiable under subheading 8517.21.00, HTSUS, as a facsimile machine. NY B87981 is set forth in "Attachment A" to this document.

It is now Customs position that the essential character of the MFC-1770, a composite good, is imparted by the printer function, and, therefore, the MFC-1770 is properly classifiable under subheading 8471.60.65, HTSUS, as an other automatic data processing thermal transfer printer unit.

Customs intends to revoke NY B87981 to reflect the proper classification of the MFC-1770 under subheading 8471.60.65, HTSUS. Before taking this action, we will give consideration to any written comments timely received. Proposed Headquarters ruling 961153 revoking NY B87981 is set forth as "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: February 5, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, August 5, 1997.

CLA-2-85:RR:NC:MM:109 B87981
Category: Classification
Tariff No. 8517.21.0000

MS. SANDRA LISS FRIEDMAN
BARNES, RICHARDSON AND COLBURN
475 Park Avenue South
New York, NY 10016

Re: The tariff classification of the MFC-1770 5 in 1 Multi-Function Center from Malaysia.

DEAR MS. FRIEDMAN:

In your letter, dated July 25, 1997, you requested a tariff classification ruling on behalf of your client Brother International Corporation, Somerset, New Jersey.

The merchandise is described in your letter and attached literature as the MFC-1770 5 in 1 Multi-Function Center. This device is designed for a home or small office type application. It is small and lightweight, measuring 15.2" x 15.0" x 8.4", and weighing 11.5 lbs. It incorporates five features: fax, PC fax, copier, scanner, and printer. The fax features include a 512KB memory (20 pgs), broadcasting, automatic 20 page document feeder, 200 sheet letter or legal size paper capacity, "smoothing" enhanced image resolution, 60 station auto dialing, 64 shade gray scale, caller ID ready, distinctive ring detection, quick-scan, electronic super cover page, next fax reservation, send or receive directly from your PC, dial and broadcast using the address book function, PC fax works in background, freeing your PC for other tasks, and a built in handset. This device uses plain paper.

The features of the printer, scanner, and copier are less significant. The printing, components of this thermal type printer engine, compared with other multi-purpose machines and standard printers, is slower at two pages per minute. The 200 x 400 dpi resolution is lower than the 300 x 300 dpi or higher than is standard with printers today. The scanner resolution is 400 x 400 dpi, and is capable of scanning in text, line art, logos, and photos. This device is a composite good under GRI 3(b). The fax components provide the essential character of this device.

The applicable subheading for the MFC-1770 5 in 1 Multi-Function Center will be 8517.21.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "[f]acsimile machines." The rate of duty will be 3.5%.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Eileen S. Kaplan at 212-466-5673.

ROBERT B. SWIERUPSKI,
Chief,
Metals & Machinery Branch,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:GC 961153 DWS
Category: Classification
Tariff No. 8471.60.65 and 8524.99.90

MS. SANDRA LISS FRIEDMAN
BARNES, RICHARDSON & COLBURN
475 Park Avenue South
New York, NY 10016

Re: Reconsideration of NY B87981; MFC 1770 Multifunction Machine; GRI 3(b); Composite Good; Explanatory Note 3(b)(VIII); Essential Character; HQs 958124 and 958348; NYs B87982, B87181, A88887, and B89972; Chapter 85, Note 6; 8517.21.00; 8524.99.60.

DEAR MS. FRIEDMAN:

This is in response to your letter of December 1, 1997, on behalf of Brother International Corporation, requesting reconsideration of NY B87981, dated August 5, 1997, concerning the classification of the MFC 1770 multifunction machine (MFC 1770) under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The MFC 1770 is a 5-in-1 multifunction machine which operates on the principle of thermal transfer technology. The machine, which is compatible with any personal computer (PC) using a Microsoft Windows environment, is capable of performing printer, facsimile, copier, and scanner functions. For the machine to perform as a printer, it must be connected to a PC through a serial port. The MFC 1770 prints at the rate of two pages per minute at a resolution of 200 x 400 dots per inch (dpi). You state that, because of its speed, the MFC 1770 is not purchased for high volume use. Instead, it is generally purchased for use in the home or small business by low volume users.

The MFC 1770 is also capable of sending and receiving faxes at a resolution of up to 200 x 400 dpi, depending on such factors as telephone line quality and scanner resolution chosen, if applicable. Because of these variables, you claim that the quality of the document produced using the printer function will generally be better than the quality of the document produced using the facsimile function. In addition, the MFC 1770 is capable of scanning text or graphic images at a resolution up to 400 x 400 dpi. The MFC 1770 is also capable of sending and receiving faxes directly through the PC, and producing copies of documents.

In its imported condition, the MFC 1770 incorporates a thermal print engine, consisting of a print head, power supply, main control board, software, and cable connection necessary for its use with a PC. It is our understanding that the software, which is imported in three 3 1/2 inch disks, provides the necessary linkage between the MFC-1770 and a PC to allow for the operation of the printer, PC facsimile, and scanner functions. You have stated that, once the software is downloaded, a series of interactive instructional images appear on the PC monitor directing the user in setting up the linkage. The thermal print head is also used for the facsimile and copier functions. In addition, the MFC 1770 incorporates a paper handling guide, paper drive, and drive motor for paper transport. The machine will be shipped with the printing cartridge removed; the cartridge will be packaged separately and shipped in the same carton with the MFC.

Issue:

Whether the MFC 1770 is classifiable under subheading 8471.60.65, HTSUS, as an other automatic data processing (ADP) thermal transfer printer unit, or under subheading 8517.21.00, HTSUS, as a facsimile machine.

Whether the software is classifiable under subheading 8524.99.60, HTSUS, as other recorded media for reproducing representations of instructions, data, sound, and image, or under subheading 8524.99.90, HTSUS, as other recorded media.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.60	Input or output units, whether or not containing storage units in the same housing:
	Other:
	Printer units:
	Other:
8471.60.65	Thermal transfer.
*	*
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; video-phones; parts thereof:
	Facsimile machines and teleprinters:
8517.21.00	Facsimile machines.
*	*
8524	Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of chapter 37:
	Other:
8524.99	Other:
	Other:
8524.99.60	For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded media.
8524.99.90	Other.
*	*

In NY B87981, which held the MFC 1770 to be classifiable under subheading 8517.21.00, HTSUS, Customs stated that the essential character of the machine, which constitutes a composite good, is imparted by the facsimile function.

Because the MFC 1770 constitutes a composite good, we must consult GRI 3(b), which states that:

[m]ixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). Explanatory Note 3(b)(VIII) (p. 4) states that:

[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In NY B87981, Customs stated that:

[t]he features of the printer, scanner, and copier are less significant. The printing components of this thermal type printer engine, compared with other multi-purpose machines and standard printers, is slower at two pages per minute. The 200 x 400 dpi resolution is lower than [sic] the 300 x 300 dpi or higher that is standard with printers today.

It is now our understanding that the 300 x 300 dpi standard that the MFC 1770 was compared against is applicable to laser printers. As thermal transfer printers are of a different class of printers from laser printers, the printer function of the MFC 1770 should not have been compared against such a standard. You have provided evidence that thermal

transfer technology is used in a wide variety of products (besides printers) whose main function is printing, such as typewriters and labeling machines. Not only is the MFC 1770 print head used for the printer function, it is also used for the facsimile and copier functions. Although the MFC 1770 prints only two pages per minute, the machine is marketed for low volume users in the home or small business, users which may not require the speed of laser printer machines. Based upon the description of the MFC 1770 you provided, it is our position that the essential character of the machine is imparted by the printer function. Therefore, the MFC 1770 is classifiable under subheading 8471.60.65, HTSUS, as an other automatic data processing ADP thermal transfer printer unit. See several rulings which have held multifunction machines to be classifiable as ADP printer units in heading 8471, HTSUS: HQ 958124, dated March 13, 1996; HQ 958348, dated January 17, 1996; NY B87982, dated August 4, 1997; NY B87181, dated July 2, 1997; NY A88887, dated October 31, 1996; and NY B89972, dated October 2, 1997.

With regard to the classification of the software, chapter 85, note 6, HTSUS, states that:

[r]ecords, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are entered with the apparatus for which they are intended.

You claim that the software is classifiable under subheading 8524.99.60, HTSUS. However, as it is our understanding that the software is not for reproducing representations of instructions, data, sound, **and** image (all four representations required), the software is precluded from classification under subheading 8524.99.60, HTSUS. Therefore, it is our position that the software is classifiable under subheading 8524.99.90, HTSUS.

Holding:

The MFC 1770 multifunction machine is classifiable under subheading 8471.60.65, HTSUS, as an other ADP thermal transfer printer unit.

The software is classifiable under subheading 8524.99.90, HTSUS, as other recorded media.

Effect on Other Rulings:

NY B87981 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

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